S.B.Civil Revision Petition No.267/2007

Bhagirath & Anr.
vs
Rajendra & Ors.

Date of order : 27.11.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.RK Thanvi, for the petitioners.

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Heard learned counsel for the petitioners.

The petitioners are aggrieved against the order dated 17.10.2007 by which the petitioners-defendants' application filed under Section 11 CPC was dismissed by the trial court.

According to learned counsel for the petitioners, the defendants-non-petitioners filed suit on earlier occasion for eviction of the petitioners-tenants by serving a notice under Section 106 of the Transfer of Properties Act on 19th July, 1977. That suit was dismissed by the trial court on the ground that in view of the Rajasthan Premises (Control of Rent Eviction) Act, 1950 (hereinafter referred to as the Act of 1950), the suit for eviction of tenant cannot be filed merely by terminating the tenancy and in a case where no ground

is made out in the pleadings under Section 13(1) of the Act of 1950. The said suit having no.86/79 was dismissed by the trial court on 3rd Sept., 1981. The non-petitioners-plaintiff now again filed the suit and after terminating the tenancy under Section 106 of the Transfer of Properties Act and there is no cause of action in the suit as the plaintiff has not pleaded any of the ground for eviction of the tenant on the basis of which decree can be passed by the trial court as per sub-section (1) of Section 13 of the Act of 1950. It is submitted that in view of the decision given in earlier suit no.86/79, decided on 3rd Sept., 1981 the present suit of the plaintiff is barred by principle of res-judicata.

The trial court dismissed the application of the petitioners on the ground that in earlier suit there was separate cause of action as notice was given on 19th July, 1977 whereas in the present case, the notice was given on 7th July, 2003 and, therefore, there is a difference of cause of action in two suits.

Learned counsel for the petitioners vehemently submitted that the trial court has committed error of law because of the reason that earlier suit was dismissed when it was filed only on the ground of

termination of tenancy under Section 106 of the Transfer of Properties Act and the same is the position in the present case.

I considered the submissions of learned counsel for the petitioners and perused the reasons given by the trial court as well as copy of the plaint as provided by learned counsel for the petitioners himself.

The reasons given by the trail court cannot be justified because of the reason that mere difference in dates of terminating of tenancy cannot make the cause of action different on which it was terminated and in the facts of this case, the date of termination of tenancy was irrelevant which could have been relevant in other circumstances. Be that as it may be, from the plaint itself it is clear that the present suit has been filed by the plaintiffs with specific averment that since the Act of 1950 stands not applicable to the area in which the property in dispute is situated and parties are residing and, therefore, the plaintiff has filed the suit under the provisions of the Transfer of Properties Act after terminating the tenancy and that is the only mode by which the landlord can seek eviction of his tenant where the provisions of the

Act of 1950 are not applicable. That fact was not noticed by the trial court and that makes the whole difference in two suits.

In view of the above reasons, I do not find any merit in this revision petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-